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3:01-CV-02031 SAFETY SYRINGES INC V. BECTON DICKINSON

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: *lm. Lmanner* DEPUTY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SAFETY SYRINGES INC., a Delaware  
corporation,

Plaintiff,

v.

BECTON, DICKINSON AND COMPANY, a  
New Jersey Corporation,

Defendants.

Civil No: 01CV2031-B(JMA) ✓  
02CV0229-B(JMA)

SAFETY SYRINGES, INC., a Delaware  
corporation,

Plaintiff,

v.

AVENTIS PHARMACEUTICALS, INC., a  
Delaware corporation,

Defendants.

Civil No: 03CV1376-B(JMA)

**ORDER CONTINUING  
SUMMARY JUDGMENT  
HEARING AND SETTING  
MARKMAN HEARING**

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On November 6, 2003, the Court conducted a telephonic status conference in Safety Syringes v. Becton Dickinson ("the Becton Dickinson cases"), 01CV2031 and 02CV0229, and in Safety Syringes v. Aventis Pharmaceuticals, ("the Aventis case"), 03CV1376.

Appearing were Hope Melville, Esq. on behalf of Plaintiff Safety Syringes, Bill McElwain, Esq. representing Defendant Becton Dickinson (01CV2031 and 02CV0229) and Bob Neuner, Esq. representing Defendant Aventis Pharmaceuticals (03CV1376).

The principal issue before the Court regards the claims construction of U.S. Patent No. 6,344,032 ("the '032 patent), which is the subject of the Becton Dickinson cases and the Aventis case. Plaintiff filed two separate suits against Becton Dickinson, alleging patent infringement. Cases 01CV2031 and 02CV0229, were filed on November 6, 2001 and February 6, 2002, respectively; the Court ordered the two cases consolidated on February 20, 2002. On February 14, 2003, the Court conducted a claims construction hearing regarding the '032 patent in the Becton Dickinson cases. The Court issued its Claims Construction Order for the '032 patent in the Becton Dickinson cases on March 7, 2003.

On June 11, 2003, Plaintiff Safety Syringes filed a separate suit against Defendant Aventis Pharmaceuticals, also alleging infringement of the '032 patent. Pursuant to Civil Local Rule 40.1(e), the Aventis case was low numbered to the Becton Dickinson cases.<sup>1</sup> To date, the Court has not conducted a claims construction hearing and the parties have not had an opportunity to present arguments regarding claims construction of the '032 patent in the Aventis case because of the timing of the filing of this case.

In construing the claims of a given patent, public policy demands that courts construe disputed claim terms consistently and uniformly when the same patent is the

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<sup>1</sup>Pursuant to Civil Local Rule 40.1(d), a case may be low numbered if "any one or more civil actions or proceedings pending or any one or more currently filed appear . . . (3) [to] involve the same patent or the same trademark . . . or, (5) for other reasons would entail substantial duplication of labor if heard by different judges." Civ. Loc. R. 40.1(d). Because the Becton Dickinson and the Aventis cases involve allegations of infringement of the '032 patent, the Aventis case was low numbered to this Court, which was already presiding over the Becton Dickinson cases.

1 subject of several lawsuits. See Markman v. Westview ("Markman II"), 517 U.S. 370, 391  
2 (1996) (stating that part of the rationale advanced for allocating all issues of claims  
3 construction to the court is to help ensure "uniformity in the treatment of a given patent").  
4 As discussed above, both the Becton Dickinson cases and the Aventis case center around  
5 alleged infringement of the '032 patent owned by Plaintiff Safety Syringes. Under the  
6 applicable public policy concerns, this Court must uniformly and consistently construe the  
7 claims terms of the '032 patent. However, Defendant Aventis Pharmaceuticals has not been  
8 given its legal right to be heard regarding construction of any disputed claims of the '032  
9 patent. Accordingly, pursuant to the issues discussed at the November 6, 2003 conference,  
10 the Court **HEREBY ORDERS:**

11 1. The Court will conduct a claims construction hearing pursuant to Markman v.  
12 Westview ("Markman I"), 52 F.3d 967 (Fed. Cir. 1995), for the '032 patent in the above  
13 titled cases on **January 21 - 22, 2004.**<sup>2</sup> The Claims Construction Order resulting from this  
14 Markman hearing shall supercede any previous Claims Construction Order regarding the  
15 '032 patent and be binding on the Becton Dickinson cases and the Aventis case.

16 2. In preparation for the Markman hearing, the Parties shall submit a joint  
17 spreadsheet **on or before December 22, 2003**, with the following: (1) a column containing  
18 the verbatim claims language of all disputed claim terms; (2) a column containing the  
19 parties' agreed upon claim construction, if any, for a given claim term; (3) columns  
20 containing each party's proposed claim construction for disputed claim terms; and (4) a  
21 column for the Court to write in the claim construction it determines to be correct for each  
22 claim term.

23 3. Each party shall submit a brief in support of its proposed claim construction  
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27 <sup>2</sup>The claims construction hearing scheduled for January 21-22, 2004 will be the second claims  
28 construction hearing for the '032 patent conducted in the Becton Dickinson cases.


1 language on or before January 5, 2003.<sup>3</sup> Each party's respective brief is  
2 limited to twelve pages in length, excluding exhibits and declarations.

3 4. The summary judgment hearing date in the Becton Dickinson cases (01CV2031  
4 and 02CV0229), currently set for January 20, 2004, is **CONTINUED** to March 1, 2004 at  
5 10:30 a.m. With respect to any motions for summary judgment, the parties shall file  
6 summary judgment briefs on or before February 2, 2004. Oppositions to the motions for  
7 summary judgment shall be filed on or before February 9, 2004. Replies in support of  
8 motions for summary judgment shall be filed on or before February 17, 2004.<sup>4</sup>

9 5. If they so choose, the parties in the Aventis case (03CV1376) may file motions  
10 for summary judgment, if any, in accordance with the schedule set forth for motions for  
11 summary judgment to be heard in the Becton Dickinson cases. See ¶ 4, supra.

12 **IT IS SO ORDERED**

13 Dated: 11-10-03

  
HON. RUDI M. BREWSTER  
United States District Judge

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16 cc: Hon. Jan M. Adler  
United States Magistrate Judge

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18 All Counsel of Record

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25 <sup>3</sup>The parties should submit a courtesy copy of the briefs due on or before January 5, 2003  
26 directly with the undersigned's chambers.

27 <sup>4</sup>The parties should submit a courtesy copy of all briefs filed regarding motions for summary  
28 judgment directly with the undersigned's chambers.